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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,480

04/13/2004

Todd Landon

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WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

EXAMINER

PADEN, CAROLYN A

ART UNIT

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1761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/823,480	Applicant(s) LONDON ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-148 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-148 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 77-88, 91-94 and 97-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards (5,308,637) for reasons of record.

Applicant argues the degree of agitation used in making the product. This has been considered but is not persuasive because the claims are directed to a product and not to a method of making a product. Process limitations do not carry any weight in product claims. Applicant argues that the product of the claims has a different structure than the product of Richards. This has been considered but is not persuasive. Both of the products are food sauces. Richards' sauce does not exhibit fat separation (end of examples 3 and 4) or fat crystallization (end of examples 1 and 2).

Claims 1-5, 7, 10, 11, 15, 22-39, 77-88, 93, 94 and 97-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreae (WO 96/25857) for reasons of record.

Applicant argues that the claims have been amended to include milkfat. In the case of Andreae, cheese is the source of milkfat. Cheese,

especially gouda and Cheddar, are known in the art to be excellent sources of milkfat.

The rejection of the claims over Kroening has been withdrawn in response to applicants' amendments to the claims.

Claims 77-83, 86-88, 95-99 and 109-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muir (2004/0005996).

Applicant argues that Muir does not contain milk fat. Butter is included as a source of milkfat in example 3.

Claims 77-90, 97-111, 115-119, 121-124, 133-145, 147 & 148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin (2002/0054939) for reasons of record.

Applicant argues that the process results in a different product from that of Irwin. No unobvious or unexpected difference is seen between the products of Irwin and the products of the claims. The fact that a product may have been made by a different process does not alone constitute unobviousness.

The rejection of the claims under 35 US 112 has been withdrawn for the reasons argued by applicant.

Claims 115-124, 127, 128, 133-142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bos (EP 0340857) as further evidenced by Lowe and Peterson.

Bos discloses an edible oil-in-water emulsion. In example 1, cream is added to water, skim milk powder, butterfat and whey protein concentrate. After mixing, pasteurization and homogenization, the product is cooled to form a spread. Although the use of an emulsifier is not mentioned in Bos, the milk protein, casein, is known in the art to be an emulsifier (see page 271 of Lowe) and milk is known in the art to stabilize emulsions (page 273 of Lowe). So even though an emulsifier is not mentioned in Bos, one of ordinary skill in the art would expect the composition to contain an emulsifier because the composition contains casein in the form of skim milk powder. Applicant argues that Bos is a spreadable product and not a sauce base. This has been considered but is not persuasive. Spreads are known to be basic components of sauces and Peterson is relied upon to support this assertion.

Claims 77-88, 93, 94, 99, 101-122, 125-128 and 133-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuchell (6,759,078) as further evidenced by Lowe.

Stuchell discloses an aseptic cream substitute for use in preparing sauce bases. The sauces made are disclosed at column 7, to include hollandaise, Alfredo and lemon butter sauce. The formulation for the cream substitute is shown in Example 1 to include water phase that is combined with melted butter, homogenized, pasteurized and cooled. Although emulsifier is not mentioned in the product, the egg yolks in the hollandaise formulation are known in the art to be emulsifiers and Lowe at page 271 is relied upon for support of this assertion. The specific processing conditions do not carry any weight in the product claims. Although buttermilks solids are not mentioned, their use would have been an obvious way to create a buttermilk flavor in the product.

Applicant argues that Stuchell does not include milk fat but butter is a known source of milk fat. Applicant argues stability and homogenization but no difference is seen between the stability of Stuchell and the claims. Homogenization is a process limitation, carrying not weight in product claims.

The rejection of the claims over Inayoshi has been dropped for the reasons argued by applicant.

Claims 131-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claim 77-90, 97-111, 115-119, 121-124, 131-145, 147 and 148 above, and further in view of Norris (4,005,228) or Youcheff (6,265,007) for reasons of record.

Applicants' arguments are basically directed to the rejection of claims over Irwin.

Claims 129-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claims 77-90, 97-111, 115-119, 121-124, 133-145, 147 and 148 above, and further in view of Muir (2004) for reasons of record.

Applicants' arguments are basically directed to the rejection of claims over Irwin.

Claims 1-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Rispoli (4,689,239) and as further in view of by Lowe and Potter.

Peterson discloses sauce preparation. In the photograph after page 118, white roux is made. Here flour and butter are combined and heated. This is considered to be the step at lines 9-11 of claim 1. The selection and preparation of hot milk is considered to be the step at lines 3-6 of claim 1.

The hot milk is added to the mixture to make a sauce. This is considered to be the step at lines 7-8. Claim 1 appears to differ from white roux in the inclusion of additional fat in the formulation at lines 14-16 of claim 1, but page 121 of Peterson provides for finishing sauce with additional butter to enrich the flavor of the sauce. So even though white roux does not show adding more fat, it is known in the art to enrich sauces with more butter. Claim 1 appears to differ from Peterson in the recitation of the inclusion of an emulsifier but milk casein and milk are known in the art to be edible emulsifiers (see Lowe at pages 271 and 273). The claim also appears to differ from Peterson in the use of homogenization. It is known in the art that homogenization is a unit operation for foods that acts to break up fat particles into smaller pieces and Potter is provided for support of this assertion. It is also known in the art that emulsion are stabilized by breaking up fat or oil droplets into smaller pieces and Lowe at page 267 under "The Theory of Emulsification". With the evidence of Lowe and Potter before him, it would have been obvious to one of ordinary skill in the food preparation art to homogenize the sauce of Peterson to stabilize the emulsion. Claim 1 also differs from Peterson in the recitation of the heating temperatures and homogenization conditions used in scaling up a sauce

preparation from a home-based level to commercial level. Rispoli teaches that it is known in the art to heat dairy-based sauces to 140-190F (abstract) and homogenize them at 2500/500 psi. If one of ordinary skill in the art wanted to prepare emulsion for commercial applications, it would have been obvious to emulsify the sauce of Peterson using the homogenization of Rispoli in order to prepare a stable emulsion. It is appreciated that all of the ingredients of egg yolk, buttermilk, whey, soy protein, oil and milk fat sources are not mentioned but it is clear from Peterson that sauces are known in the art to be prepared with alternative ingredients and alternative steps in order to optimize the taste of the sauce. To prepare one known sauce over the other would have been within the abilities of one of ordinary skill in the art. Pasteurization is also well known in the art to provide aseptically processed sauces.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a

first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

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PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 9-14-07
PRIMARY EXAMINER
GROUP 1800 1761